

FCC MAIL SECTION

Before the
 Federal Communications Commission
 Washington, D.C. 20554

DISPATCHED BY
 MM Docket No. 92-247

In the Matter of

Amendment of Section 73.202(b), RM-8098
 Table of Allotments,
 FM Broadcast Stations.
 (Christiansted, Virgin Islands)

REPORT AND ORDER
 (Proceeding Terminated)

Adopted: July 14, 1995; Released: July 25, 1995

By the Chief, Allocations Branch:

1. At the request of Clayton Knight ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making*, 7 FCC Rcd 7235 (1992), proposing the allotment

¹ Petitioner's late-filed letter expressing his continuing interest in Channel 285A at Christiansted will be accepted since it would be in the public interest and no other expression of interest has been filed. Therefore, the acceptance of petitioner's letter reaffirming his interest in the channel will cause no prejudice to any other party. However, petitioner's informal second "Expression of Interest and Motion to Dismiss" is not filed pursuant to Commission Rules 1.415 and 1.420 and, therefore, will not be considered herein.

We also recognize that petitioner, as requested in the *Notice*, failed to comply with Section 1.52 of the Commission's Rules which states that "[a] party who is not represented by an attorney shall sign and verify the document and state his address. . . ." Here, petitioner did sign the petition and state his address but failed to also verify that the statements contained in the petition were true and accurate to the best of his knowledge. However, since Channel 285A can be allotted to Christiansted without conflicting with any other pending request, we believe that the failure of the petitioner to verify his statements should not result in the severe penalty of denying Christiansted its fifth local commercial FM transmission service. Nevertheless, this action should not be construed as releasing parties from the requirements of Section 1.52 of the Commission's Rules. Indeed, were we unable to make this allotment without prejudice to another party, the failure to remedy the omission could well have resulted in dismissal of petitioner's request.

² Comments and a counterproposal were jointly filed by El Mundo Broadcasting Corporation, licensee of Station WKAQ-FM, San Juan, Puerto Rico; Estereotempo, Inc., licensee of Station WIOC-FM, Ponce, Puerto Rico; Radio Redentor, Inc., licensee of Station WERR-FM, Utuado, Puerto Rico; and Aurio Matos, licensee of Section WNNV-FM, Aguada, Puerto Rico ("counterproponents"), proposing the substitution of Channel 287B1 for Channel 288A at Aguada, Puerto Rico, and the modification of Station WNNV(FM)'s construction permit accordingly. Additionally, counterproponents requested the reallocation of Channel 281B from Utuado to Gurabo, Puerto Rico, and the modification of Station WERR-FM's license to

of Channel 285A at Christiansted, Virgin Islands, as its fifth local commercial FM transmission service. Petitioner filed comments in support of the proposal reaffirming his intention to apply for the channel, if allotted.¹ Opposing comments were filed by St. Croix Wireless Co., Inc. ("Wireless").² Reply comments were filed by petitioner, counterproponents, Jose J. Arzuaga, and Radio and Redentor, Inc. Consolidated reply comments were also filed by Paradise Broadcasting Corporation ("Paradise"). After the pleading cycle closed, counterproponents filed a motion for leave to file supplemental comments.³ Wireless filed further reply comments. Petitioner filed responsive reply comments.⁴

2. In its opposing comments, Wireless states that Christiansted is an unincorporated town on the island of St. Croix. Wireless also states that according to the 1990 U.S. Census, Christiansted has a population of 2,555. Wireless asserts that Christiansted has not grown since the 1980 Census. Wireless asserts that a Class A station in the Virgin Islands, which is permitted to operate far in excess of mainland Class A stations, could cover the entire island of

specify the change of community of license. In order to accommodate their proposal, counterproponents proposed the substitution of Channel 285B for Channel 284B at San Juan, Puerto Rico; the substitution of Channel 283B for Channel 286B at Ponce, Puerto Rico; the substitution of Channel 267B for Channel 246B and the substitution of Channel 298B for Channel 282B at Charlotte Amalie, Virgin Islands; the substitution of Channel 300B for Channel 299B at Carolina, Puerto Rico; the allotment of Channel 282A at Frederiksted, Virgin Islands; and the allotment of Channel 274A at Christiansted, Virgin Islands (RM-8183).

Public Notice of the counterproposal was given on February 17, 1993, Report No. 1927.

Counterproponents filed identical comments and counterproposal in MM Docket Nos. 92-244, 92-245 and 92-247. After the pleading cycles closed, counterproponents filed a consolidated notice of withdrawal in all three dockets. Therefore, since the counterproposal (RM-8183) was dismissed in the context of MM Docket No. 92-244, 10 FCC Rcd (1995), responsive pleadings in the instant docket are moot and will not be discussed herein.

³ Although counterproponents' supplemental comments were accompanied by a motion for leave to file, the comments advise of matters of which we would take official notice in any event. Therefore, since the supplemental comments would not assist us in reaching a final determination, they have not been accepted for consideration.

⁴ The Commission does not contemplate the filing of pleadings after the comment and reply comment periods unless specifically requested, as set forth in the *Notice*. However, we will accept petitioner's late-filed reply comments. Petitioner's allegation of misrepresentation is unsubstantiated and need not be considered. Furthermore, petitioner has not suffered any prejudice thereby. Petitioner's motion to dismiss is moot in light of counterproponents' withdrawal. Wireless' late-filed reply comments need not be addressed since they reiterate earlier comments filed by Wireless.

St. Croix (population 50,139)⁵ with a city grade signal. Wireless argues that since 93% of the population lives outside its "towns," the allotment of a new channel at Christiansted is "meaningless." Christiansted, states Wireless, already has one AM and six FM stations.⁶ Thus, argues Wireless, by allotting another channel at Christiansted would mean one radio station for every 319 residents. Wireless claims that an additional channel on the island would cause the stations, by necessity, to be competing for "very limited advertising revenues" and thus would create economic hardships. Furthermore, contends Wireless, the over-saturated local aural service is enhanced by a plethora of service from other nearby islands. Accordingly, Wireless urges that the Commission deny petitioner's proposal because of the economic impact it would have on existing stations.⁷

3. In its reply comments, Paradise contends that petitioner's statement of continuing interest was more than two weeks late-filed and was neither recorded on the Commission's docket nor available for inspection in the Commission's public reference room. Paradise further claims that it was not served by petitioner. Even if served, Paradise asserts the late filing would have precluded parties from timely filing responsive pleadings. The counterproponents also claim that their search of the official records revealed no statement of continuing interest filed by petitioner, and thus they conclude that one was never filed.⁸ Therefore, Paradise and counterproponents urge that since no other party filed a timely expression of interest, and that petitioner's statement of interest was either never or late-filed, the proposal be dismissed. See n.1, *supra*.

4. VISC's arguments regarding competitive and economic hardships of a new allotment in Christiansted raise issues which the Commission has already determined not relevant in either a licensing or allotment context. See *FM Channel Assignments; Policies Regarding Detrimental Effects of Proposed New Broadcast Stations on Existing Stations*, 3 FCC Rcd 638 (1988), *recon. denied* 4 FCC Rcd 2276 (1989); *Cheyenne, Wyoming*, 8 FCC Rcd 4473 (1993). Consequently, there is no basis under the current state of Commission precedent for consideration of those issues. In a related context, there is no Commission requirement for Clayton Knight or any other party to demonstrate a "demand" or need for an allotment aside from the already stated willingness of Mr. Knight to apply for the Channel 285A allotment at Christiansted and construct the proposed facilities.

5. Based on the information before us, we believe the public interest would be served by the allotment of Channel 285A at Christiansted, since it would provide the community with its fifth local commercial FM transmission service. An engineering analysis has determined that Channel 285A can be allotted at Christiansted in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.0 kilometers (5.0 miles) west.⁹

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective September 8, 1995, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Christiansted, Virgin Islands	228B, 236B, 258B, 262B, 285A

7. The window period for filing applications will open on September 8, 1995, and close on October 10, 1995.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

⁵ Population figure taken from the 1990 U.S. Census.

⁶ Two of the FM stations are for noncommercial educational use.

⁷ In the alternative, Wireless requests that the Commission delay action on the proposed allotment at Christiansted until the outcome of a pending petition for rule making (RM-7932) filed by the National Association of Broadcasters, seeking a review of the Commission's commercial FM allotment and licensing policies.

⁸ We note that petitioner's certificate of service certifies that a copy of the letter expressing petitioner's continuing interest in the channel was mailed to counsel for counterproponents on January 27, 1993. However, the certificate does not reflect that a copy was mailed to Paradise or its counsel.

⁹ The coordinates for Channel 285A at Christiansted are North Latitude 17-45-00 and West Longitude 64-46-50.